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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

In Re:

DOW CORNING LITIGATION

Civil Action No. 00-CV-00001

MASTER DOCKET

HONORABLE DENISE PAGE HOOD

CASE MANAGEMENT ORDER NO. 4 (Class 11, 14, 14A, 15 and 17 Claims)

This Case Management Order ("CMO") No. 4 is entered pursuant to the Amended Joint Plan of Reorganization, as effective June 1, 2004 (the "Plan"), the Litigation Facility Agreement ("LFA"), and this Court's continuing jurisdiction over claims asserted against the DCC Litigation Facility, Inc. (the "Facility"), which is predicated, *inter alia*, on Article III of the United States Constitution, the Bankruptey Code, Proofs of Claim that were previously filed, and various provisions of the Plan and LFA including, but not limited to, Sections 8.7.1, 8.7.3, 8.7.7, 8.7.8, 5.13.1, 5.13.3, 5.13.4, and 5.13.5 of the Plan and Sections 5.02(c), 5.02(e), 6.01, and 6.05 of the LFA.

Section 5.13.1 of the Plan states that any Class 11 (Co-Defendant) Claims not settled or estimated for distribution on or before the Effective Date shall be channeled to the Facility for purposes of Claim liquidation. Section 5.13.3 of the Plan states that any Class 14 (Domestic Health Insurer) Claim held by a claimant who elects to litigate the allowability of such Claim shall be channeled to the Facility for purposes of Claim liquidation. Section 5.13.4 of the Plan states that all Class 14A (Foreign Health Insurer) Claims shall be channeled to the Facility for purposes of Claim liquidation. Section 5.13.5 of the Plan states that any Class 15 (Government Payor) and Class 17 (General

Contribution) Claims not settled or estimated for distribution on or before the Confirmation Date shall be channeled to the Facility for purposes of Claim liquidation.

Section 5.02(c) of the LFA states that claims in Classes 11, 15 and 17 that were not allowed or estimated before the Confirmation Date shall be resolved by litigation. Section 5.02(e) of the LFA states that claims in Classes 14 and 14A held by claimants who elected, or are required by the Plan, to litigate such claims shall be resolved by litigation. Section 6.05 of the LFA states that claims in Classes 11 through 15 and 17 that have been channeled to the Facility for resolution shall be dealt with in accordance with the terms of the Case Management Orders.

This CMO No. 4 supplements prior CMOs issued by the Court. CMO No. 4 governs all Class 11, 14, 14A, 15 and 17 Claims channeled to the Facility pursuant to the Plan and the LFA, with the sole exception of the Class 15 Claim filed by Province of Manitoba, which is the subject of CMO No. 4A. This Order may be supplemented to provide more specific procedures (consistent with the terms of this Order and the Plan) as the contours of the litigation involving Class 11, 14, 14A, 15 and 17 Claims become better known and more fully developed.

The Court orders as follows:

1. Required Procedure for Commencing Litigation Against the Facility Based on a Class 11, 14, 14A, 15 or 17 Claim

(a) The Claims Administrator of the Settlement Facility – Dow Corning Trust shall send a document titled "Notice Letter to Class 11, 14, 14A, 15 and 17 Claimants" ("Notice Letter") to all Class 11, 14, 14A, 15 and 17 Claimants. The Notice Letter shall inform all such claimants of the Effective Date of the Plan. The Notice Letter will include a copy of this CMO No. 4 and a copy of the civil cover sheet attached hereto as Exhibit A.

- (b) Class 11, 14, 14A, 15 and 17 Claimants who wish to pursue litigation against the Facility shall commence an action against the Facility by filing with the Clerk of this Court a complaint and a civil cover sheet within 90 days of the date of the Notice Letter and by paying the applicable filing fee. The caption of the complaint and page 2 of the civil cover sheet will identify that the complaint relates to a Class 11, 14, 14A, 15 or 17 Claim.
- (c) Upon receipt of the complaint, civil cover sheet, and filing fee, the Clerk of this Court shall assign each Class 11, 14, 14A, 15 and 17 Case a docket number. Each case shall identify the action as a Class 11, 14, 14A, 15 or 17 respectively, in order to distinguish the Class 11, 14, 14A, 15 and 17 Cases from the Opt-Out or Non-Settling Tort Cases.
- (d) Within 30 days of the date of the filing of the complaint, the Class 11, 14, 14A, 15 or 17 Claimant will serve a copy of the complaint on the Facility at: DCC Litigation Facility, Inc., P.O. Box 2089, Midland, MI, 48541-2089, by regular U.S. mail. The Class 11, 14, 14A, 15 or 17 Claimant will include, along with a copy of the complaint, a request to waive service of the summons. The Facility will waive service of the summons and will return the waiver to the Claimant or his/her counsel within 30 days.
- (e) The Facility will file and serve an answer or other responsive pleading to each complaint filed by a Class 11, 14, 14A, 15 or 17 Claimant within 60 days after service of the complaint.
- (f) Absent proof that a Class 11, 14, 14A, 15 or 17 Claim had not accrued as of the 90-day deadline following the date of the Notice Letter, the failure by a Class 11, 14, 14A, 15 or 17 Claimant to timely file and serve a complaint in accord with the requirements set forth in Sections 1(b) and (d) above may, absent good cause, forever bar any and all claims and causes of actions by Class 11, 14, 14A, 15 and 17 Claimants.

2. General Sequence of Cases

Pending subsequent orders by the Court concerning the scheduling and management of Class 11, 14, 14A, 15 and 17 Cases, the Class 11, 14, 14A, 15 and 17 Cases shall proceed toward certification for trial according to the following sequence: (1) notice and filing period; (2) claim description, analysis, and review; (3) consolidated motion practice, if applicable and necessary; (4) pre-trial settlement procedures, including ADR; (5) case-specific discovery; and (6) trial.

3. Initial Claim Description and Review

(a) Due to the unique and individualized nature of each Class 11, 14, 14A,15 and 17 Claim, the standardized Claimant Questionnaire discussed in CMO Nos. 1-2 for the Opt-Out or Non-Settling Tort Claimants will not be used in the Class 11, 14, 14A, 15 and 17 Cases. However, each Class 11, 14, 14A, 15 and 17 Claimant who timely files a complaint against the Facility shall complete and serve upon the Facility. within 120 days of the date of the filing of the complaint, a "Claim Summary and Description" concerning their Class 11, 14, 14A, 15 or 17 Claim. This Claim Summary and Description shall include a written description of the Claim, the legal and/or statutory bases supporting the Claim, the relevant facts, including relevant dates, giving rise to the Claim, the individuals and/or witnesses with knowledge or information concerning the Claim (including name, address, and contact information), and a statement of the claimed damages. If the Class 11, 14, 14A, 15 or 17 Claim is based on contribution or indemnity. or is otherwise related to any other underlying claim, cause of action, judgment, or settlement, the Claim Summary and Description shall also include similar information concerning the underlying claim, cause of action, judgment, or settlement. The Claim Summary and Description shall also include copies of all potentially relevant documents and records including, but not limited to, bills, invoices, checks, memoranda, correspondence, pleadings, orders, judgments, or settlements.

- (b) Failure to serve on the Facility a complete and accurate Claim Summary and Description within 120 days of the date of the Notice Letter may, absent good cause shown, and upon motion by the Facility, constitute grounds for dismissal of a Class 11, 14, 14A, 15 or 17 Case.
- enable the Facility to understand, analyze, and evaluate the Class 11, 14, 14A, 15 or 17 Claim. If the information provided by a Class 11, 14, 14A, 15 or 17 Claim Summary and Description is incomplete or otherwise insufficient for this purpose, the Facility will send a letter to the Class 11, 14, 14A, 15 or 17 Claimant identifying the deficiencies in the Claim Summary and Description. If the Class 11, 14, 14A, 15 or 17 Claimant then fails to remedy the deficiencies in the Claim Summary and Description within 30 days from the date of the deficiency letter, the Class 11, 14, 14A, 15 or 17 Cases may, upon motion by the Facility, be subject to sanctions and/or dismissal.
- Class 11, 14, 14A, 15 and 17 Claimants who have timely commenced an action against the Facility in accord with the procedures outlined in Section 1 above, the Facility shall conduct a preliminary analysis of the Class 11, 14, 14A, 15 and 17 Cases. This analysis shall be completed within 210 days from the date of the Notice Letter described in Section 1(a) above and a summary report regarding the Class 11, 14, 14A, 15 and 17 Cases will be provided by the Facility to the Special Master and others as designated by the Court. The Special Master will then make a recommendation to the Court concerning future scheduling and sequencing of the Class 11, 14, 14A, 15 and 17 Cases.

4. Completed Discovery

Hundreds of depositions of plaintiffs, corporate representatives and experts have been taken in MDL-926 and related state court proceedings. In addition, millions of documents are available for inspection through the MDL Depository in Birmingham, Alabama. The documents are also available on CD-ROM Disks.

These documents and depositions are available to the parties for use in individual trials in accordance with the Rules of Evidence and various orders of the MDL Court.

Additional non-case specific discovery will only be conducted if it is recommended by the Special Master and authorized by the Court.

The report of the 706 Panel appointed in the MDL proceeding, together with the record associated with the 706 Panel process (including any depositions), similarly will be available to the parties for use in individual trials in accordance with the Rules of Evidence and various orders of the MDL Court.

5. Case Specific Discovery

Besides the Claim Summary and Description discussed in Section 3 above, and until the Facility completes its preliminary analysis and report concerning the Class 11, 14, 14A, 15 and 17 Cases, and this Court issues a further order regarding the scheduling and sequencing of the Class 11, 14, 14A, 15 and 17 Cases, no other case-specific discovery shall be conducted by the Facility or the Claimants in the Class 11, 14, 14A, 15 and 17 Cases unless leave is obtained from the Special Master to conduct case-specific discovery out of the sequence described in Section 2 above.

6. Miscellaneous

The provision contained in Sections 13-16 of CMO No. 1 shall apply to the Class 11, 14, 14A, 15 and 17 Cases as if fully re-written and re-stated here.

ORDERED this the JUL 2 5 2005 day of 2005

DENISE PAGE HOOD

United States District Judge

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% JS 44 (Rev. 11/04)

FOR OFFICE USE ONLY

RECEIPT#

AMOUNT _____ APPLYING IFP _____

CIVIL COVER SHEET County in which this action arose

The IS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) DEFENDANTS I. (a) PLAINTIFFS Dow Corning Class: ___ County of Residence of First Listed Defendant (b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. (c) Attorney's (Firm Name, Address, and Telephone Number) Attorneys (If Known) II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) 3 Federal Ouestion DEF PTF U.S. Government ЙL Incorporated or Principal Place \square 4 Citizen of This State **0** (Plaintiff (U.S. Government Not a Party) of Business In This State U.S. Government 4 Diversity Citizen of Another State \square 2 □ 1 2 Incorporated and Principal Place O 5 □ 5 Defendant of Business in Another State (Indicate Citizenship of Parties in Item III) Citizen or Subject of a □ 3 Foreign Nation □ 6 Foreign Country NATURE OF SUIT (Place an "X" in One Box Only) FORFEITURIZZENALTY OTHER STATUTES BANKRUPTCY CONTRACT ☐ 110 Insurance ☐ 120 Marine □ 422 Appeal 28 USC 158 610 Agriculture 400 State Reapportionment PERSONAL INJURY PERSONAL INJURY 000 362 Personal Injury -410 Antitrust 620 Other Food & Drug 423 Withdrawal 310 Airplanc ō 625 Drug Related Seizure 430 Banks and Banking ☐ 130 Miller Act 315 Airplane Product 28 USC 157 Med. Maloractice ☐ 140 Negotiable Instrument 450 Commerce Liability 365 Personal Injury of Property 21 USC 881 PROPERTY RIGHTS 630 Liquor Laws 460 Deportation ☐ 150 Recovery of Overpayment 320 Assault Libel & Product Lisbility 470 Racketeer Influenced and □ 368 Asbestos Personal 640 R R. & Truck ☐ 820 Copyrights & Enforcement of Judgment Slander □ 151 Medienre Act 330 Federal Employers' Injury Product 650 Airline Regs. ☐ 830 Patent Corrupt Organizations ☐ 152 Recovery of Defaulted ☐ 660 Occupational ☐ 840 Trademark 480 Consumer Credit Lightlity Liability PERSONAL PROPERTY 490 Cable/Sat TV 340 Marine Safety/Health Student Loans ☐ 690 Other (Excl. Veterans) 345 Marine Product 370 Other Fraud 810 Selective Service LABOR SOCIAL SECURITY 850 Securities/Commodities/ ☐ 153 Recovery of Overpayment 371 Truth in Lending Liability 350 Motor Vehicle 7 861 HIA (1395ff) Exchange of Veteran's Benefits 380 Other Personal 710 Fair Labor Standards 7 875 Customer Challenge 355 Motor Vehicle 🗇 862 Black Lung (923) 160 Stockholders' Suits Property Damage Act 12 USC 3410 ☐ 190 Other Contract Product Liability 385 Property Damage 720 Labor/Mgmt. Relations I□ 863 DIWC/DIŴŴ (405(g)). 195 Contract Product Liability 360 Other Personal 730 Labor/Mgmt Reporting □ 864 SSID Title XVI 890 Other Statutory Actions Product Liability □ 196 Franchise Injury & Disclosure Act □ 865 RS1 (405(g)) 891 Agricultural Acts ☐ 210 Land Condemnation REAL PROPERTY CIVIL RIGHTS 740 Railway Labor Act FEDERAL TAX SUIT 892 Economic Stabilization Act PRISONER PETITIONS ☐ 870 Taxes (U.S. Plaintiff 790 Other Labor Litigation 893 Environmental Matters 441 Voting 510 Motions to Vacate 442 Employment Sentence 791 Empl. Ret. Inc. or Defendant) 894 Energy Allocation Act ☐ 220 Forcelosure 230 Rent Lease & Ejectment 🗖 871 JRS—Third Party 895 Freedom of Information 443 Housing/ Habeas Corpus: Security Act 26 USC 7609 240 Torts to Land Accommodations 530 General Act П 900Appeal of Fee Determination 245 Tort Product Liability 444 Welfare 535 Death Penalty 🗍 290 All Other Real Property 445 Amer, w/Disabilities -☐ 540 Mandamus & Other. Under Equal Access Employment 550 Civil Rights to Justice 446 Amer. w/Disabilities ☐ 950 Constitutionality of 555 Prison Condition State Statutes Other 440 Other Civil Rights Appeal to District V. ORIGIN (Place an "X" in One Box Only) ☐ 4 Reinstated or ☐ 5 Transferred from ☐ 6 Multidistrict Judge from Magistrate **Ö** 3 ☐ 2 Removed from Original Remanded from Judgment Proceeding Appellate Court Reopened (specify) Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): VI. CAUSE OF ACTION Brief description of cause: CHECK YES only if demanded in complaint: VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ Yes UNDER F.R.C.P. 23 JURY DEMAND: COMPLAINT: VIII. RELATED CASE(S) (See instructions): DOCKET NUMBER JUDGE IF ANY SIGNATURE OF ATTORNEY OF RECORD DATE

JUDGE

PURSUANT TO LOCAL RULE 83.11

1.	Is this a case that has been previously dismissed?	Yes
If yes, give	the following information:	∐ No
Co u rt:		
Case No.:		
Judge:		
2.	Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)	Yes No
If yes, give	the following information:	
Court:		
Case No.:		
Judge:		
Notes :		

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the fillings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filled. The attorney filling a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

- HI. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filling date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

- VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes**unless diversity. Example: U.S. Civil Statute: 47 USC 553
 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.